OPINION
71-23-L

**ANSWER:** Yes.

A.R.S. § 38-622, as amended 1970, provides in part as follows:

"A. When the official duties of a public officer, deputy or employee require him to travel from his designated post of duty, he shall be allowed expenses and allowances therefor.

"B. Such expenses and allowances shall be authorized by travel orders signed by the head of the department or agency, or by a person to whom such authority has been properly delegated."

It appears from Section B above that it was the intent of the legislation authorizing travel claims that the travel orders are required to be signed by the head of a department or agency for which the travel is necessary. If such was not the intention, it would not be necessary to have the approval of the travel order by the head of the agency for which the travel is being performed, but would rather be necessary for the travel order to be approved by the agency paying the travel expenses. If the result were otherwise, the incongruous result would permit the administrative head of one agency to exercise some degree of control over the travel budget and funds of the other agency served by the official or employee, and could not be condoned.

A contrary conclusion would be further complicated in a situation where an official whose primary responsibility was to an agency whose funds are derived wholly from trust accounts was nevertheless designated as an ex-officio member of a board or commission which has responsibilities not related to the trust agency's activities. Requiring the payment of travel and subsistence from the trust account could constitute an illegal diversion of such trust funds.

Therefore, it is hereby concluded that the board or agency for whom the travel is being performed has the responsibility of paying travel and subsistence claims for attendance at its meetings. Such travel expenses for an ex-officio member of a board or commission should be treated no differently than those of other members who are not otherwise state employees.

**Opinion No. 71-23-L (R-79)** **August 11, 1971**

**REQUESTED BY:** KENNETH G. FLICKINGER
Registrar of Contractors

**QUESTIONS:**

1. In considering the law as a whole relating to the licensing of contractors as well as the rules and regulations promulgated under such law, and specifically Rule 31, is it proper for the Registrar of Contractors to require a minimum of four years experience within the last ten years as a prerequisite to taking the examination for an Arizona Contractor's License?

2. If the answer to Question 1 is that the

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**Registrar of Contractors does not have the authority to establish the four year requirement, does that department have the authority to set forth any minimum experience requirement, trade and/or business as a prerequisite to taking the examination?**

**ANSWERS:** **1. No.**

**2. No; see body of opinion.**

Administrative agencies are endowed with quasi-legislative powers and functions often in conjunction with power judicial in nature. However, the essential legislative functions may not be delegated to administrative agencies, and they are precluded from legislating in the strict sense. The most pervasive legislative power conferred upon administrative agencies is the power to make rules and regulations. *United States v. Grimaud*, 220 U.S. 506, 31 S.Ct. 480, 55 L.Ed. 563 (1910). However, no legislative body may delegate to administrative agencies the essential legislative powers vested in it, except when authorized by the Constitution. *Sandstrom v. California Horse Racing Board*, 31 Cal.2d 401, 189 P.2d 17, 3 A.L.R.2d 90; cert. den. 335 U.S. 814, 69 S.Ct. 31, 93 L.Ed. 369; reh. den. 335 U.S. 905, 69 S.Ct. 404, 93 L.Ed. 439 (1948).

The rule-making power which may be conferred is the power to make reasonable rules and regulations not inconsistent with law and subject to the implied constitutional limitation that the administrative agencies must not legislate. *Marcet v. Board of Plumbers' Examination and Registration*, 249 Ala. 48, 29 So.2d 333 (1947). The delegation of power to make rules and regulations cannot extend to the making of rules which subvert the statute reposing such power or which are contrary to existing laws or repeal or abrogate statutes. *Blatz Brewing Co. v. Collins*, 69 Cal.App.2d 639, 160 P.2d 37; anno. 79 L.Ed. 491 (1945); *State v. Burdge*, 95 Wis. 390, 70 N.W. 347 (1897).

A rule or regulation which is broader than the statute empowering the making of the rule or which oversteps the boundaries of interpretation of a statute by extending or restricting the statute cannot be sustained. Administrative regulations which go beyond what the Legislature has authorized or which violate or are inconsistent with the statute transferring the power are void. *Medical Properties, Inc. v. North Dakota Board of Pharmacy*, 80 N.W.2d 87 (N.D. 1956).

Where a right is granted by a statute the agency administering such statute may not by regulation add to the conditions of that right a condition not stated in the statute, nor may it bar from that right a person included within the terms of the statute. *Wilmington Country Club v. Delaware Liquor Commission*, 47 Del. 352, 91 A.2d 250 (1952); *Application of State Board of Medical Examiners*, 201 Okla. 365, 206 P.2d 211 (1949). An administrative agency may not create a new license requirement. *Blatz Brewing Co. v. Collins, supra.*

The purpose of the Arizona contractor licensing laws is to protect the public against unscrupulous and unqualified persons purporting to have the capacity, knowledge and qualifications of a contractor. *Northern v. Elledge*, 72 Ariz. 166, 232 P.2d 111 (1951); *Security Insurance Company of New Haven v. Day*, 6 Ariz.App. 403, 433 P.2d 54 (1967). Pursuant thereto, the Registrar of Contractors is empowered to make rules necessary to classify contractors consistent with established usage and other rules necessary to effectually carry out the provisions and intent of

the contractor licensing laws. A.R.S. §§ 32-1105.A and 32-1104.6.

However, the procedure for being licensed as a contractor is specifically enumerated in A.R.S. § 32-1124.A, and the requirements for obtaining such a license are enumerated in A.R.S. §§ 32-1122, 32-1123 and 32-1152.

A.R.S. § 32-1122 provides as follows:

"A. No contractor's license shall be issued under this chapter except by act of the registrar of contractors. The registrar shall investigate, classify and qualify applicants for contractors' license *by written or oral examination, or both.*

"B. To obtain a license under this chapter, the applicant shall file the required fee and bond and meet the following requirements:

"1. He shall submit to the registrar, on forms the registrar prescribes and in accordance with rules and regulations adopted by the registrar, a verified application, including a complete statement of the general nature of his contracting business, and if an individual, his name and address, or if a partnership, the names and addresses of all the partners, or if a corporation, association or other organization, the names of the president, vice president, secretary and chief construction managing officer or officers, and if a corporation not organized under the laws of this state, a statement showing that the corporation is qualified to do business by completing all acts required for such qualification in this state and in each county in which the contract or any part thereof is to be performed. Such application shall contain the certification of two reputable citizens of the county in which the applicant resides that he is of good reputation, recommending that the license be granted and containing a statement that the applicant desires the issuance of a license under this chapter.

"2. He shall be of good reputation, and *the registrar shall require him to show by written examination experience in the kind of work he proposes to contract,* his general knowledge of the building, safety, health and lien laws of the state, or the rudimentary administrative principles of the contracting business and of the rules and regulations promulgated by the registrar pursuant to this chapter.

"3. He shall never have been refused a license or had a license revoked for reasons that should preclude granting a license, or shall not have engaged in the contracting business nor shall he have submitted a bid within one year prior to making the application on any contracting work without first having been issued a license as required by this chapter, nor shall he act as a contractor between the filing of the application and actual issuance of the license.

"4. He shall not have been adjudicated bankrupt within one year preceding the filing of his application.

"5. He shall furnish to the registrar satisfactory evidence that he is able to and will carry, upon issuance of a license by the registrar, workmen's compensation insurance as prescribed by law.

"6. The application for a license for branches or any division thereof of general engineering, building or specialty contracting shall be accompanied by the fee and bond required under this chapter.

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"C. *The registrar of contractors shall establish a series of examinations applicable to each class of contractors, and each applicant shall be required to successfully complete such examination as a prerequisite to issuance of his license.*" (Emphasis added.)

The Registrar of Contractors has enacted Rule 31, which provides in part:

"The right to take an examination for a contractor's license is partially predicated upon the experience of the examinee. The examinee must have had four years practical experience within the last ten years, dealing specifically with the type of construction, or its equivalent, for which applicant is applying for license."

The Arizona courts have stated that administrative boards with powers to adopt rules may act only within the boundaries established by the standards, limitations and policies of the act. *Hernandez v. Frohmiller*, 68 Ariz. 242, 204 P.2d 854 (1949). A statute may not be changed by administrative rule and such rules by administrative bodies are subordinate to the terms of the statute under which they are promulgated. *Duncan v. A.R. Krull Co.*, 57 Ariz. 472, 114 P.2d 888 (1941); Cf. *State Board of Barber Examiners v. Walker*, 67 Ariz. 156, 192 P.2d 723 (1948).

Applying the above criteria to the administrative rule in question, it is the opinion of this office that a rule imposing a four year experience requirement as a prerequisite to being examined for a contractor's license is an expansion of the statutory requirements, and therefore invalid.

A.R.S. § 32-1122.B.2 recognizes the need for experience as a prerequisite of being licensed as a contractor, but dictates that such experience shall be demonstrated by written examination, thus precluding any additional requirements than set out therein.

## Opinion No. 71-24-L (R-80) August 10, 1971

**REQUESTED BY:** THE HONORABLE RICHARD J. RILEY
Cochise County Attorney
Bisbee, Arizona

**QUESTIONS:**

1. Are 18 year olds eligible for jury duty?
2. Must affidavits of registration of 18 year old voters be consolidated with those of voters 21 years of age and older?
3. Is it possible that a person could move into the State of Arizona one day, register to vote the next day, and be on a jury list the third day?

**ANSWERS:** See body of opinion.

The answers to all of these questions are in the affirmative. A.R.S. § 21-201 is simple and explicit in the qualifications for jurors. It states: "Every juror, grand and trial, shall be an elector in the county." The 26th Amendment to the United